Supreme Court of the United States

No. 598

DRAKE BAKERIES INCORPORATED,

Petitioner.

AGAINST

LOCAL 50, AMERICAN BAKERY & CONFECTIONERY WORKERS INTERNATIONAL, AFL-CIO,

Respondent.

BRIEF OF THE NEW YORK STATE AFL-CIO *AMICUS CURIAE*

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This brief is submitted by the New York State AFL-CIO as *amicus curiae* with the consent of the parties.

I

The Interest of the New York State AFL-CIO.

The New York State AFL-CIO is a federation of labor unions in New York State. It is composed of more than two thousand affiliated unions having a total membership in excess of two and one-half million.

The New York State AFL-CIO does not engage in collective bargaining and has no direct relationship with employers. Nevertheless, one of its stated purposes is to promote collective bargaining and to safeguard the

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OCTOBER TERM, 1961

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DRAKE BAKERIES INCORPORATED,

Petitioner,

against

LOCAL 50, AMERICAN BAKERY & CONFECTIONERY WORKERS INTERNATIONAL AFL-CIO, and LOUIS GENUTH, Secretary-Treasurer, LOCAL 50, AMERICAN BAKERY & CONFECTIONERY WORKERS INTERNATIONAL, AFL-CIO,

Respondents.

REPLY BRIEF FOR PETITIONER

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collective agreement. It is unreservedly committed to the proposition that in a free economy and in a democratic society labor relations can best be conducted through a collective agreement voluntarily arrived at and faithfully adhered to. This position is in accord with our national policy enunciated in the National Labor Relations Act.

Experience teaches that an arbitration procedure is vital to the functioning of the collective agreement. If the collective agreement were to be left in the hands of the courts for interpretation, application and redress it would fail as a workable institution. This is not being said out of a lack of respect for or confidence in the Courts. It is simply that the successful administration of the collective agreement calls for a specialized treatment, a flexibility, a speed and an economy which our judicial procedure is not geared to give, evolved as it has out of a different history to serve different purposes.

> "The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed." (*United Steel Workers v. Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582, 80 S. Ct. R. 1347, 1353.)

In that respect the collective agreement is much like the great body of modern social and regulatory legislation. Here too experience has taught that the effective operation of these measures cannot be achieved through the normal judicial processes. They have therefore been entrusted to specialized agencies that can give them an expertness freed of rigid formalism without which they could not function.

The New York State AFL-CIO sees in the petitioner's position a serious blow at labor arbitration. No broader

clause than the one contained in the collective agreement now before the Court could be written. The parties have agreed to submit to arbitration "all complaints, disputes or grievances" involving "any clause or matter covered" by their agreement and "any act or conduct or relation" between them. If that language is held not sufficient to keep every phase of the agreement out of the courts then defeat must be acknowledged. Then it must be said that no matter what may be the wording used, in the end it will prove futile. By one device or another, by one line of reasoning or another, one of the parties will always find the way to escape its clear commitment and to involve the other in the expense, the delays and the technicalities of litigation. In point of fact, the more subtle the reasoning, the finer the hair-splitting, the greater the uncertainty and confusion that will be injected and the deeper the hurt to the collective agreement.

Therein lies the reason for the concern of the New York State AFL-CIO.

II

Petitioner's case rests on an assumption of facts and an interpretation of the collective agreement which it is for the arbitrator to find and to make.

Petitioner's argument rests on this premise—the respondent violated the no-strike clause and, therefore, petitioner may seek redress in court. But this begs the issue. It assumes as already established the very thing which is yet to be established.

Whether respondent violated the no-strike clause is first of all a question of fact. Just exactly what did the em-

ployees do? Just exactly what did respondent do, to what extent, if any, in what manner and to what degree did respondent participate, aid or abet? These facts once established it would then become necessary to determine whether or not they constituted a breach of the collective agreement. That would necessarily entail a construction of its provisions. This is inescapable. It is impossible to sustain petitioner's allegation of a violation of the no-strike clause without reference to the agreement and without applying its provisions to the facts as found. But that falls squarely within the arbitration procedure which expressly states that "all complaints, disputes, or grievances arising between them involving questions of interpretation or application of any clause or matter covered by this contract" shall be submitted to arbitration.

III

There is no warrant for giving the no-strike clause an importance greater than any other in the collective agreement.

Repeatedly petitioner asserts that the no-strike clause holds a unique position in the collective agreement. So that a charge that it has been breached can be taken to the courts without need of submitting it to the arbitration procedure set up for the disposition of all other disputes that may arise under the agreement. Reflection will show that no such absolute special quality can be assigned to any part of the collective agreement. The value of each of its provisions varies not only with the person affected but with the circumstances.

It may be conceded that ordinarily the no-strike clause is of foremost importance to the employer. But that is

not always so. Given a time of sharp business decline or unusually heightened competition and the wage structure, the scheduled tours of duty and the methods of production become the prime center of his concerns. Under such circumstances conduct on the part of his employees which he considers to be in violation of the contractual provisions covering these areas will pose a threat to the continued well-being of his enterprise much greater than that of an illegal stoppage.

For the union, on the other hand, the union security clause is the heart of the collective agreement. Upon this depends its bargaining strength, its power of internal discipline, at times its very existence. A breach of the no-strike clause may do great injury to the employer, continued disregard of the union security clause would in the end destroy the union. With reason the union could argue that if the first is entitled to redress at the hands of the court in disregard of the arbitration procedure then surely the second is entitled to like treatment.

The stipulated wages are normally of first interest to the workers. However, in a time of depression and wide layoffs seniority takes prime place since it determines the right to hold the job. In such a time, the employees could not be blamed if they were to regard what they consider the employer's departure from the seniority provisions as destructive of the economic security which for them is the essence of the collective agreement.

Give to any provision a special status which exempts it from arbitration and the same will have to be done again and again as other interests and circumstances dictate. The result will be that the arbitration machinery set up by the collective agreement for its orderly administration will be riddled by exceptions to the point of nullity.

The collective labor agreement is an integrated whole. No one clause has primacy. Each has its function to perform in interrelation and in interreaction with the others. Arbitration is built in as an essential part. Its purpose is to apply general provisions to the specifics of particular situations, to shape a document with the unavoidable inadequacies and ambiguities of written language into an effectively operating instrument. For the achievement of this purpose the arbitration machinery must have authority over every aspect of the agreement. To truncate its scope, to keep some part of the agreement out of its jurisdiction would becloud its status and weaken its ability to serve. This may be of narrow, immediate advantage at a given moment to one or the other of the parties but in the end it would do injury to them all.

We again quote from the opinion of this Court in *United Steel Workers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574, 584; 80 S. Ct. R. 1347, 1353:

> "In the absence of any express provision excluding a particular grievance from arbitration, 'we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad. Since any attempt by a court to infer such a purpose necessarily comprehends the merits, the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provisions of a labor agreement, even through the back door of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator."

IV

The arbitrator is possessed of adequate power fully to redress the wrong, if he were to find that petitioner was wronged.

Petitioner is mistaken when it argues that the arbitrator could not impose a sufficiently effective sanction were he to conclude that the respondent did actually violate the no-strike clause (Brief, p. 17).

Squarely in point is the holding of the Court of Appeals in New York (the jurisdiction in which this arbitration proceeding would take place) that the arbitrator may award damages in a case arising out of an employer's charge that there was a breach of the no-strike clause (*Matter of Publishers' Association*, 8 N. Y. 2d 414). The same Court sustained an arbitrator's award which enjoined a strike in violation of the collective agreement (*Ruppert* v. *Egelhofer*, 3 N. Y. 2d 576).

So that if petitioner will succeed in persuading the arbitrator that there was a violation of the no-strike clause it can obtain from him the very same relief it could get in court—damages for the past wrong and an injunction against like misconduct in the future.

V

We respectfully urge that the Judgment of the Court of Appeals be affirmed and the matter at issue be ordered submitted to arbitration.

Respectfully submitted,

EDWARD MAGUIRE,
HERMAN A. GRAY,
Counsel to the New York State AFL-CIO.